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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ANASTASIA BEVERLY HILLS, INC.
ANASTASIA SOARE
ANASTASIA SKIN CARE, INC.
Opposers,

v.

ANASTASIA MARIE LABORATORIES, INC.
Applicant.

)
)
) Opposition No.
) 91188736
)
)
) APPLICANT'S
) OPPOSITION TO
) MOTION TO DISMISS
) AND APPLICANT'S
) MOTION FOR
) SUMMARY JUDGMENT

Applicant, Anastasia Marie Laboratories, Inc., by and through its attorney, hereby requests that the Trademark Trial and Appeal Board (the "Board"):

- (1) deny Opposers Anastasia Beverly Hills, Inc., Anastasia Soare and Anastasia Skin Care, Inc.'s Motion to Dismiss Applicant's cancellation counterclaims; and
- (2) grant Applicant's motion for summary judgment and cancel Opposers' Registrations Nos. 2,798,069 and 2,821,892 in Class 3 for the marks ANASTASIA BEVERLY HILLS and ANASTASIA BEVERLY HILLS stylized logo design based upon Opposers' fraud upon the U.S. Patent and Trademark Office.

Applicant relies upon its Memorandum of Law, Declaration of Daphne Sheridan Bass, its motion for leave to file its amended pleadings and its pleadings which plead fraud with particularity in accordance with *DaimlerChrysler Corporation and Chrysler, LLC v. American Motors Corporation*, Cancellation No. 92045099 (January 14, 2010).

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INTRODUCTION

In this opposition proceeding commenced on January 24, 2009 against Applicant's mark ANASTASIA, Applicant counterclaimed to cancel Opposers' registrations for ANASTASIA BEVERLY HILLS in Class 3 on the ground of fraud.

Opposers moved to dismiss Applicant's counterclaims, asserting that fraud was not pleaded with particularity; a point well-taken as Applicant's petitions were filed before *In re Bose Corp.*, No. 2008-1448, 2009 WL 2709312 (Fed. Cir., Aug. 31, 2009). Applicant has filed a motion to amend its counterclaim to address those pleading issues and a proposed Amended Counterclaim setting forth Applicant's fraud allegations in accordance with *DaimlerChrysler Corporation and Chrysler, LLC v. American Motors Corporation*, Cancellation No. 92045099 (January 14, 2010).

But Opposers have also filed a Motion to Amend to delete 13 goods in Class 3 from both registrations on the basis that they were never used. Opposers' excuses defy reality. It is their Motion to Amend which ignites the instant Motion.

Applicant does not merely claim that Opposers "should have known" that they were deceiving the PTO. They must have known that they were deceiving the PTO in the face of:

- (1) their admission that 13 products never existed and a request to delete another 12;
- (2) their excuses displaying a pattern of conduct perpetuated over 2 years consisting of a reckless disregard of the truth so egregious that it rises to the level of fraud;
- (3) their own Disclosures imputing fraud; and
- (4) an admission that every "use" date in both registrations were misstated ---

---- all of which amounts to evidence of a case of fraud that cannot, *by any stretch of the legal imagination*, be less than "clear and convincing".

MEMORANDUM OF LAW

STATEMENT OF FACTS

I. The Parties

Applicant Anastasia Marie Laboratories, Inc. ("Applicant") distributes a skin care line which focuses principally on diabetic skin care needs. Applicant's C.E.O., Anastasia Marie Chehak, herself a "Type 2" diabetic person, founded Applicant in 1989. For over 20 years, Applicant's products have sold nationwide with nearly 10 of those years under the ANASTASIA brand, creating a significant reservoir of goodwill. Applicant has standing in this proceeding under 15 U.S.C. § 1063(a). (Applicant Disclosures - **Exhibits A; B**)

Opposer Soare ("Opposer") operates a salon in Beverly Hills, California called "Anastasia Beverly Hills", where she performs eyebrow plucking services for a clientele which, Opposer declares, includes Hollywood celebrities. Other salon services are available, but the salon's primary attraction and service is that of eyebrow shaping. Opposer's honed expertise in this field has reportedly earned her a reputation as the "Eyebrow Guru"; resulting in television appearances on "The Oprah Winfrey Show" and other nationally syndicated programs (Opposer **Exh. PB-1**; ¶¶6,7; Opposers' Disclosures ABH 010023- **Exhibit C**).

II. Applicant's ANASTASIA Application

On January 24, 2009, Opposers filed their opposition to Applicant's mark ANASTASIA Ser. No. 77150306 for body cream, body lotion, hand cream, hand lotions and skin cleansing lotion; claiming likelihood of confusion and dilution of their registered marks ANASASIA BEVERLY HILLS, No.2,821,892, and the stylized A ANASTASIA BEVERLY HILLS, No.2,798,069 (the "Marks") in Class 3. Applicant filed an Answer and two counterclaims to cancel Opposers' registrations on the ground of fraud.

III. Opposers' Registrations Nos. 2,798,069 /2,821,892

Opposers own 2 registrations:

(1) Registration No. 2,798,069 for A ANASTASIA BEVERLY HILLS ("AABH"): Potpourri; cosmetics, namely, foundation, concealer, pressed powder, loose powder, eye shadow base, blush, bronzing liquid, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color pencils, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, nail polish, nail base coat, and nail top coat; skin care products, namely, facial cleansers, facial cleansing bars, facial toners, facial astringents, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial masques, facial serums, facial exfoliators, body cream, body lotion, body powder, body moisturizers, body lotions, body toners, body astringents, and hand creams; body cleansing products, namely, creams, gels, and bar soaps; fragrance products, namely, perfume, eau de parfum, eau de toilette, eau de cologne, fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances in Class 3, candles in Class 4, eyebrow tweezers, eyebrow grooming scissors in Class 8 and cosmetic brushes in Class 21; and:

(2) Registration No. 2,821,892 for ANASTASIA BEVERLY HILLS ("ABH"): Potpourri; cosmetics, namely, foundation, concealer, pressed powder, loose powder, eye shadow base, blush, bronzing products, eye shadows, mascara, eyeliners, lip coverings, lipstick, lip gloss, lip liners, eyebrow color products, eyebrow pencils, eyebrow powder, eyebrow pomade, eyebrow gel, nail polish, nail base coat, and nail top coat; skin care products, namely, facial cleansers, facial cleansing bars, facial toners, facial astringents, facial moisturizers, eye creams, eye gels, eye-area moisturizers, eye-area gels, eye-area creams, facial masques, facial serums, facial exfoliators, body cream, body lotion, body powder, body moisturizers, body lotions, body toners, body astringents, and hand creams; body cleansing products, namely, creams, gels, and bar soaps; fragrance products, namely, perfume, eau de parfum, eau

de toilette, eau de cologne, fragranced creams, lotions, gels, bar body toners, and astringents; room fragrances in Class 3, candles in Class 4, eyebrow tweezers, eyebrow grooming scissors in Class 8 and cosmetic brushes in Class 21.

IV. The Material Facts

A. Opposers Admit to Non-Use of the Marks on 13 Goods in Class 3

In their Motion to Amend, Opposers admit that the marks have not been used in commerce on 13 goods in Class 3: nail polish, nail base coat, nail top coat, body powder, facial toners, facial astringents, facial masques, body toners, body astringents, body cleansing gels, fragranced gels, bar body toners and astringents.¹

Opposers also seek to delete an additional 12 products from Class 3 and one product in Class 4 in both registrations; stating that they are not “currently” promoting these products for nationwide sale. (Opp. Exh. PB-1 ¶41).

Opposer Soare offers a plethora of excuses for her misrepresentations to the PTO; ranging from insinuations that the PTO Declaration language which she signed on 2 occasions was unclear --- to the fact that she did not read, review nor understand the PTO documents which she signed in 2 trademark applications over 2 years. She says that:

- (1) Neither the ABH Declaration nor the AABH Declaration which she signed in 1999 when she filed the trademark applications made “any explicit reference to any specific goods...”.(¶¶ 15, 25).
- (2) She “did not conduct a careful review of the ‘goods’ listed” in either of the two applications. (¶¶15, 25).

¹ Opposers’ Motion to Amend lists 13 goods which have not been used; Opposer Soare’s Declaration lists “12” as not used and “13” as not “currently” in use.

- (3) With respect to both the ABH application and the AABH application, she “*did not have a clear understanding of what it means to ‘use the mark in commerce’ other than that the listing of goods included all the product categories that she was ‘planning to market’.*” (¶¶ 15, 25).
- (4) She “did not realize that the 2001 ABH Amendment would be interpreted to mean that ABH was claiming that it was then using the mark in any particular way.” (¶ 20).
- (5) She “mistakenly believed that any commercial use of the name ‘Anastasia Beverly Hills’ constituted ‘use in commerce’.” (¶ 21).
- (6) She “did not review the Notice of Allowance referenced in the 2003 AABH Declaration” which she signed under oath. (¶ 30).
- (7) She “did not know that the Statement of Use filed with her 2003 Declaration would be interpreted to mean that ABH was claiming that it was using the mark on each of those goods in interstate commerce.” (¶ 31).
- (8) She “did not understand the legal meaning of ‘interstate commerce’.” (¶ 30).
- (9) She does not “profess to be an expert on what constitutes normal trade usages and practices in the field of fragrances and perfumes”. (¶ 38).

(Soare Decl. - Exh. PB-1, Opposer’ Motion to Dismiss)

B. Opposer’s Own Disclosures Impugn Her “Honest Mistake” Excuses

Opposers provided mountains of publicity releases in their Disclosures discussing Opposer Soare and her renown as the “Eyebrow Queen”. Two publicity releases in August and October, 2000 confirm that Opposer Soare knew *then* that the Marks were not in use on skin care or fragrance products identified in the registrations. Herein are excerpts from Opposers’ own Disclosures:

(1) Opposer's August, 2000 interview with "Womens Wear Daily" ("WWD"):

"Of the overall goals for the line, she admitted 'step two', *a full skin care collection, is underway*, as is step three, a fragrance. She already has begun the painstaking process of identifying scents, but *she's in no rush to bring out either category*. " (Emphasis added).

WWD, August, 2000. (Opposers' Disclosure ABH 010023, **Exhibit C**).

(2) Opposer's October, 2000 interview with "The Wall Street Journal" ("WSJ"):

"This fall she launches the Nordstrom counters. *Next, she would like to launch a skin care line, followed by a fragrance*. Eventually she dreams of taking her company public. *'If I want something, I will get it,' she says. I am the most ambitious person you have ever met.*" (Emphasis added).

WSJ, October 23, 2000, (Opposers Disclosures ABH 010131, ABH 010132, ABH 010133, ABH 010134 - **Exhibit D**).

Thus, in May, 2001, Opposer verified to the PTO that the ABH Marks had been in use in skin care and fragrance *as of September, 2000* --- a date prior to her October 2000 remarks to the WSJ stating her future wishes to launch a skin care line.

And, 2 years later, in August, 2003, she signed another PTO Declaration; this time, alleging use of the AABH Marks *as of October, 1999* - 1 year prior to her press interviews in which she discussed her future goals to market skin care and fragrance.

Opposer knew that the marks were not in use on skin care and fragrance products when she gave her press interviews: she characterized the skin care and fragrance products as *possible goals*. Yet, she knowingly misrepresented to the PTO in verified documents that those goods *existed* - giving "use" dates preceding her remarks as to goods *not yet in existence*.²

² Opposer's belief system as to truth is apparently not limited to PTO filings. In discovery, Opposer stated that she never heard of Applicant before the instant matter. Yet, in 2005, Opposer had instructed her then counsel to obtain Applicant's signature on a co-existence agreement due to the PTO's 2(d) refusal of Opposers' applications Serial Nos. 76/632,130 and 76/632/127 based upon Applicant's priority. Opposer threatened Applicant with a petition to cancel if Applicant would not agree. Applicant did not agree, and Opposer eventually persuaded the PTO to issue the registrations.

This is not an issue of “erroneous use date”. These are knowing and intentional misrepresentations of fact intended to induce the PTO into issuing registrations for goods which Opposer knew did not exist --- made on 2 separate occasions to the PTO.

C. A Search on Opposers’ Website Produced “0” Results for Skincare

Not surprisingly, a March 9, 2009 search conducted on Opposers’ website “*Anastasia Soare The Definitive Brow Expert*” -- yielded “0” results for skin care products.³ (Bass Decl., **Exhibit E**).

ARGUMENT

I. The Totality of the Evidence Proving Opposers’ Fraud is

Clear and Convincing

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with an application to register which it knows or should know to be false or misleading. *Torres v. Cantine Torresella S.r.l.*, 1U.S.P.Q.2d 1483 (Fed. Cir. 1986). In order to cancel a registration based on fraud, proof must be adduced by clear and convincing evidence of both a false statement and an intent to deceive the PTO. *Metro Traffic Control, Inc. v. Shadow Network Inc.*, 104 F.3d 336 (Fed. Cir. 1997); *L.D. Kichler Co. v. Davoil Inc.*, 192 F.3d 1349 (Fed. Cir. 1999).

And, in *In re Bose No. 2008-1448*, 2009 WL 2709312 (Fed. Cir., Aug. 31, 2009), the court stated, “When drawing an inference of intent, ‘the involved conduct, viewed

³ After the fraud petitions were filed, Opposers added 3 skincare products to their website.

in light of all the evidence....must indicate sufficient culpability to require a finding of intent to deceive. *Kingsdown* 863 F.2d at 876.”

In this case, Opposer’s conduct indicates sufficient culpability to require a finding of intent to deceive, in view of:

- (1) Opposers’ admissions that the Mark was never used on 13 goods and their now-pending request to delete another 13 goods because they “are not currently” used;
- (2) Opposer’s stated failure to read, review and understand the unambiguous language of the PTO documents which she signed in prosecuting 2 separate applications on 2 different occasions over the course of 2 years;
- (3) Opposer’s own Disclosures of her quoted press interviews which patently refute her claim of “honest mistake” misrepresentations to the PTO;
- (4) Opposer’s admission that all dates of use were misstated, including one in Class 4 which came into actual use after Opposer signed the PTO documents; and
- (5) a search of Opposers’ website before applicant’s counterclaims for fraud were filed disclosing no use of Opposers’ marks on any of the skin care products identified in their registrations.

II. The Bose Decision Supports a Finding of an Intent to Commit Fraud Based Upon “Objective Manifestations”

In overturning the *Medinol* “should have known” standard, the *Bose* court explicitly affirmed the Board’s emphasis on “objective manifestations” in analyses of intent to commit fraud:

“We understand the Board’s emphasis on the “objective manifestations” to mean that ‘intent must often be inferred from the circumstances and related

statement made. *Id.* (internal quotation marks omitted quoting *First Int'l. Serv.*, 5 USPQ2d at 1636). We agree." (Emphasis added). *In re Bose, Id.*

Although the *Bose* court overruled the "should have known" standard used in *First Int'l. Serv. Corp. v. Chuckles, Inc.*, 5 USPQ2d 1440, 1443 (TTAB 1997), the court cited the Board's reasoning concerning "objective manifestations" as sound law.

Significantly, *First Int'l Servs., Id.* was concerned with an Applicant's testimony that he misunderstood the language of the unambiguous legal document.

In *First Int'l Servs., Id.*, Applicant filed a Section 1(a) application claiming use of the mark for shampoo, hair conditioner, hair setting lotion, hair spray, permanent waves, hair colors, skin and body lotions, skin moisturizers, skin cleansing cream, skin toners and body shampoo. After admitting that the mark had not been used on most of the goods identified in the application at the time he signed the application, Applicant's president testified that he misunderstood the language in the application "has adopted and is using" to mean a list of all products on which the mark would be used in the future. The Board stated:

[W]e recognize that it is difficult, if not impossible, to prove what occurs in a person's mind, and that intent must often be inferred from the circumstances and related statement made by that person. Otherwise, all claims of fraud could easily be defeated by the simple statement, "I had no intent to do so." The analysis must be whether the person knew or should have known of the falsity of the statement.....The language in the application that the "Applicant had adopted and is using the mark shown" is clear and unambiguous and was central to the application. *The errors in this statement cannot be characterized as mere carelessness or misunderstanding to be winked at as of no importance.* (Emphasis added). *First Int'l Servs., Id.*

The factual situation in *Bose* was wholly different. There, the CAFC concluded that a registrant's sworn statement of "use", although false, was an "honest misunderstanding or inadvertence without a willful intent to deceive." *In re Bose, Id.*

In *Bose*, the mark was used on 4 out of 5 goods. Although certain goods bearing the mark were no longer manufactured, registrant continued to repair those goods which customers shipped to it. The court held that the registrant's belief that it was using the goods was an "honest misunderstanding or inadvertence without a willful intent to deceive."

Here, the Marks are listed for 57 goods in Class 3 for each of 2 registrations issued 2 years apart. Opposer admits that the Marks were never used with 13 items, and they now seek to delete 12 additional items in Class 3 and 1 product in Class 4; stating that these products are not "currently" promoted for "nationwide sale". And, so, in the face of applicant's fraud counterclaims, Opposers now seek to remove a total of 26 items from the 2 challenged registrations. In addition, and as further proof of Opposers' reckless disregard for the truth, Opposer Soare admits that she misstated all dates of first use.

III. Opposer's Excuses Evince a Pattern of Conduct of such Rampant and Reckless Disregard as to Rise to the Level of an Intent to Deceive

The scope of Opposers' misrepresentations to the PTO are nothing short of outrageous.

In their Motion to Amend, Opposers admit that the Marks were never used in connection with 13 products identified in Registrations 2798069 and 2821892. (Opp. Exh. PB-1, ¶ 39).

Opposers boldly ask this Board to allow them to amend 2 registrations with impunity, and in the face of Applicant's fraud allegations, to delete 13 items in Class

3 from both registrations and change the dates of first use in every class listed in both registrations. Opposers also admit that the actual date of first use in Class 4 was subsequent to the date that Opposer Soare verified both applications to register, and they now propose to delete Class 4 in its entirety from both registrations. Opposers also want to delete an additional 12 products from Class 3 in both registrations stating that they are not “currently” promoting these products for nationwide sale. (Exh. Opp. PB-1, ¶ 39).

With respect to Opposer’s deletions and proposed amendments, Opposer Soare’s untenable excuses project an attitude of such reckless disregard toward the truth or falsity of the PTO documents that can only be characterized as contemptuous:

- (1) Neither the ABH Declaration nor the AABH Declaration which she signed in 1999 when she filed the trademark applications made “any explicit reference to any specific goods...” (¶¶ 15, 25).
- (2) She “did not conduct a careful review of the ‘goods’ listed” in either of the two applications. (¶¶ 15, 25).
- (3) With respect to both the ABH application and the AABH application, she “did not have a clear understanding of what it means to ‘use the mark in commerce’ other than that the listing of goods included all the product categories that she was “planning to market”. (¶¶ 15, 25).
- (4) She “did not realize that the 2001 ABH Amendment would be interpreted to mean that ABH was claiming that it was then using the mark in any particular way.” (¶ 20).
- (5) She “mistakenly believed that any commercial use of the name ‘Anastasia Beverly Hills’ constituted ‘use in commerce’.” (¶ 21).
- (6) She “did not review the Notice of Allowance referenced in the 2003 AABH Declaration” which she signed under oath. (¶ 30).

- (7) She “did not know that the Statement of Use would be interpreted to mean that ABH was claiming that it was using the mark on each of those goods in interstate commerce.” (¶ 31).
- (8) She “did not understand the legal meaning of ‘interstate commerce’”. (¶ 30).
- (9) She does not “profess to be an expert on what constitutes normal trade usages and practices in the field of fragrances and perfumes”. (¶ 38).

(Soare Decl. - Exh. PB-1, Opposer’ Motion to Dismiss)

This is *not* a case of an “honest mistake” or “mere inadvertence” constituting “simple negligence” or even “gross negligence”. This is reprehensible conduct perpetuated over 2 years without regard to the truth or falsity of the filings of USPTO documents, infecting 2 trademark applications and designed to obtain trademark registrations which had no basis in law or fact.

This is not a case of “simple negligence” involving an isolated incident where:

- a box was inadvertently checked on the TEAS form (*Medinol Ltd. v. Neuro Vasx, Inc.*, 67 U.S.P.Q.2d 1205 (T.T.A.B. 2003); or
- goods were inadvertently left in a box on the TEAS form (*Jimlar Corp. v. Montrexpert S.P.A.*, Canc. No. 92032471 (T.T.A.B. June 4, 2004, not citable as precedent)

--- each of which was ruled to be “fraud” but might (or might not) be characterized today as “simple negligence”.

Nor is this a case involving a lengthy, erroneous description of goods which might, today, be characterized as “gross negligence” but was determined to be fraud where the application was inadvertently not divided into “use-based” and “intent-to-use” (*J.E.M. International, Inc. v. Happy Rompers Creations Corp.*, Canc. No. 92043073 (TTAB February 10, 2005 not citable as precedent).

Nor is this a case of an Applicant who, in the course of filing and prosecution of a single application made any single mistake. This is, instead, a pattern of reckless and egregious indifference as to the truth or falsity of verified documents, which were relied upon by the USPTO, and were material to the issuance of the challenged registrations. Opposers recklessly failed to seriously consider and execute the unambiguous Declarations at times (2001 and 2003) when they were represented by trademark counsel in New York and California. Opposer now admits that the subject Marks were not used as to 13 goods listed in the registrations, and that a total of 25 items in Class 3 should be deleted, and that dates of first use should be changed for the remaining items --- in *both* applications. If this conduct does not exceed --- let alone “meet” the legal standard of “reckless disregard” in trademark jurisprudence --- nothing does. If this conduct does not constitute fraud on the USPTO, then the requirement that the averments in an application be verified is simply a nullity.

Each of Opposer’s excuses reflects a reprehensible and irresponsible disregard for the truth that is, at a minimum, “reckless”. Taken as a whole, Opposer’s pervasive and reckless disregard of the truth or falsity of the PTO documents which she signed relative to 2 separate trademark applications made a mockery of their importance and took “reckless disregard” of the truth to the ineluctable level of “fraudulent intent”. It is inarguable that the PTO would not have granted these registrations had it known *then* what it knows *now*.

IV. The Circumstantial Evidence of Opposer’s Fraud is Clear and Convincing

“Of course, ‘because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence. But such evidence must still be clear and convincing, and inferences drawn from lesser evidence cannot satisfy the deceptive intent requirement.’ *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1366 (Fed.Cir. 2008).

When drawing an inference of intent, “the involved conduct, viewed in light of all the evidence....must indicate sufficient culpability to require a finding of intent to deceive.” “Kingsdown, 863 F.2d at 876. *In re Bose Corp.*, No. 2008-1448, 2009 WL 2709312 (Fed. Cir., Aug. 31, 2009).

Here, the circumstantial evidence of Opposers’ fraud is simply astounding. It includes:

- Opposers’ admissions that the Marks were never in use for 13 goods in Class 3 (and not currently in use for another 12);
- A pattern of utter and unremitting reckless disregard of the truth or falsity of PTO documents signed and filed in connection with the prosecution of two separate trademark applications conducted over two years --- resulting in 13 goods being unlawfully registered in each of 2 separate registrations and false dates of first use recorded for 57 goods in Class 3 in two separate registrations.
- Opposer Soare’s August, 2000 quoted interview in “Womens Wear Daily” discussing her “goal” to expand her eyebrow business to include a full skin care collection – which flatly contradicts Opposer’s 2001 and 2003 verifications to the PTO that those same goods *were in existence before her WWD interview*; and
- Opposer’s October, 2000 interview with “The Wall Street Journal” repeating her desire to *hopefully* have a skin care product line --- which flatly contradicts her 2001 and 2003 verifications to the PTO that those same goods *were in existence before her WSJ interview*.

Opposer cannot be heard to claim that her misstatements to the PTO were “honest mistakes”. The facts are clear that, when she signed both Declarations 2 years apart in 2001 and 2003, Opposer deceived the PTO since, in 2000, she had told

Womens' Wear Daily and *The Wall Street Journal* that skin care and fragrance products (41 goods identified in her intent-to-use applications) -- were goods which she *wanted* to market --- not goods which *existed* on the 1999 and 2000 dates she alleged in the Declarations.

V. Opposers' Amendments Cannot Cure Their Fraud

The proposition that amendments to a registration cannot cure fraud is anchored in trademark doctrine as well as notions of common sense. *Tequila Cazadores, S.A. de C.V. and Bacardi Company, Limited v. Tequila Centinela, S.A. de C.V.* (Opp. No. 01125436, TTAB Feb. 24, 2004).

Regardless, the Board had made clear that correction of a false statement regarding use if made before a registration has been challenged, may create a rebuttable presumption that [registrant] did not intend to commit fraud.” *Zanella Ltd. v. Nordstrom, Inc.*, 90 USPQ2d 1758 (TTAB 2008). (Emphasis added). In this case, however, Opposers seek to correct by amendment their false statements made nearly one year after the fraud claims were filed. Thus, even under the Board’s pre-*Bose* jurisprudence, it is too late for Opposers to cure their fraud. Moreover, there is no precedent for allowing such a “cure” where the factual circumstances surrounding the false statements are as outrageous as in this case.

Only now, many years later and nearly one year after two fraud claims were lodge in response to an utterly spurious attack upon the senior user – do Opposers finally admit that 13 goods were never used and an additional 12 goods “are not currently in use”. But for the fraud claims, Opposers would have continued their reckless disregard of the law and not sought to amend their registrations.

CONCLUSION

This case belongs in the pantheon of trademark fraud jurisprudence.

There is no genuine issue of fact concerning Opposers' admissions to non-use of the Marks on 13 goods in two registrations. And, there is no genuine issue of fact concerning Opposers' pattern of reckless disregard in deceiving the PTO in order to procure registrations.

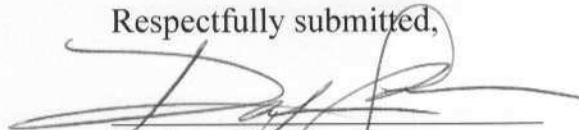
Opposers' attempts to excuse their fraud made a mockery of the application process and the solemnity of the application verification. At best, Opposers' excuses evince such a reckless disregard of the truth as to constitute an intent to deceive. At worst, this conduct reflects an unconscionable disregard of the truth borne of contempt for the rule of law and its process.

For all of the foregoing reasons, Applicant respectfully requests that the Board:

- (1) dismiss Opposers' Motion to Dismiss as "moot" based upon Applicant's Motion to Amend and [Proposed] Amended Counterclaims of Fraud; and
- (2) grant this Motion and cancel Registrations 2,798,069 and 2,821,892 in Class 3.

Dated: February 12, 2010

Respectfully submitted,



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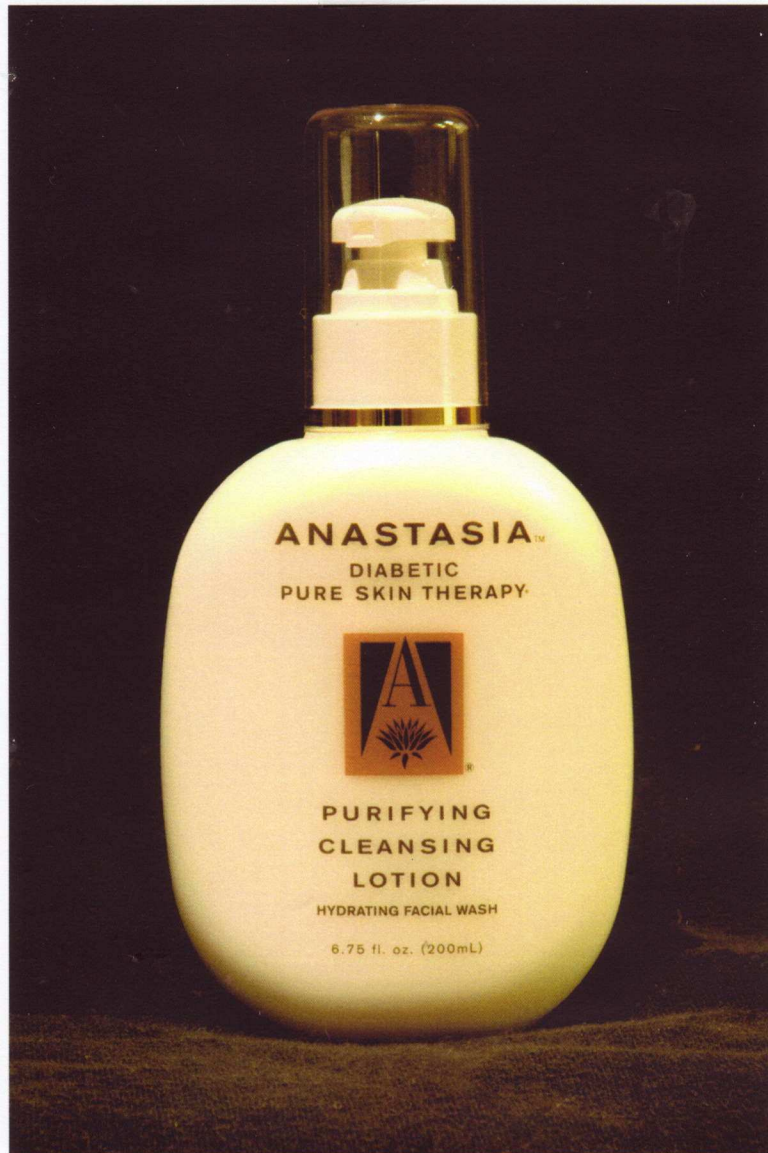


EXHIBIT A



Anastasia Marie Chehak, R.D., L.D., C.D.E.,

is a well-known authority, educator, nutritionist, clinician, entrepreneur, and graduate of the OU Health Sciences Center.

As a Board Certified Diabetes Educator, Registered and Licensed Dietitian and a Type 1 diabetic herself, Anastasia is among the nation's leading experts regarding the physical effects of diabetes and an innovator who combines the special skincare needs of the diabetic with superior pharmacology to champion a proactive philosophy of diabetes self-management. She is both the creator of a revolutionary brand of FDA-approved diabetic skincare and foot care products and also a passionate healer who remains at the forefront of the industry.

Anastasia is founder, President and CEO of Anastasia Marie Laboratories, Inc. (AM Labs). Her vision and pioneering research created Diabetic Pure Skin Therapy®. She actively continues diabetes education, clinical investigation, testing, and product development at AM Labs. She is a leading authority on diabetic foot and skin care.

Anastasia and AM Labs have been the subject of over 100 publications in retail pharmacy and diabetes journals on developments in diabetes skin and foot care, diabetes disease management and education, podiatry, health and nutrition. She formerly served on the Industry Advisory Board for Retail Pharmacy News in New York.

She is also a past member of the Board of Directors for the American Diabetes Association of Oklahoma. Her professional affiliations include the American Diabetes Association, the American Association of Diabetes Educators, Independent Cosmetic Manufacturers and Distributors and the American Dietetic Association. Her numerous honors and awards include: Profiles in Excellence by Podiatry Management; Case of the Year Award by the Small Business Institute and many others too lengthy to list.



**ANASTASIA MARIE LABORATORIES, INC.
INTERNATIONAL**

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VoiceofDiabetes.com

FRIDAY

Nordstrom Welcomes Eyebrow Guru

LOS ANGELES — Beginning next month, busy-browed shoppers visiting Nordstrom can leave the cosmetics department plucked, pencilled and perfectly arched.

Along with launching her signature cosmetics and beauty accessories line, celebrity eyebrow queen Anastasia Soare has decided to personally hire and train aestheticians at the first 10 Nordstrom stores in the north and west that carry the 182-stockkeeping-unit collection.

Fred Segal Essentials-Studio 600 in Santa Monica began featuring the line in late July. Soare's own shop, Anastasia in Beverly Hills, began introducing the products in late March.

"It will be something new, a new service in the stores. I think that will be a big point of difference from all the other makeup lines," said Soare, who made her mark at Juan Juan in Beverly Hills before opening her salon in 1997.

There she provides what she dubs "an instant facelift," shaping and grooming the famous brows of Chloe Sevigny, Julianna Margulies, Kate Capshaw and Madonna. "Nordstrom," she noted, "is very excited about it."

Dale Crichton, executive vice president for cosmetics at Nordstrom, concurred. "I just felt like her brow products were a strong point of difference in our department. The brow is such an important feature, and one else in the department was addressing it that seriously. These counter browers will bring to every location a whole new standard of expertise. It's an incredible service for our customer."

Crichton added that the 10 doors were chosen based on "a great cosmetics following" among the chain's retail customers. (The line was originally slated for a June rollout in Nordstrom, but the fall 2000 collection was delayed due to quality problems with manufacturing the brushes, said Soare.)

Soare, in fact, is raising her sales expectations with



Anastasia Soare in her Beverly Hills salon.

WYD that retail sales were targeted at \$1 million in 2000 at her salon. With only four months remaining once distribution extends to Nordstrom, she's doubling that initial figure.

The plan is to introduce the eyebrow service as a walk-up item, as business builds, provide it by appointment.

"I'm going to train all of them. I'm going to fly most of the aestheticians here because then they could see me working on the clients," she noted.

Soare said she tends the brows of up to 50 clients a day at her salon.

"Having such a wide variety of eyebrow products, you need to teach the clients how to use every product

and how to do the eyebrows," she said, her words flavored by her native Romania, where she studied graphic design, architecture and chemistry. "A makeup artist isn't allowed to shape the eyebrows, use the wax, so you need [an aesthetician]."

Soare and French designer Etienne Jarde created the Anastasia packaging with a French antique aesthetic and a modern flair.

Soare also co-designed the counter-top point-of-purchase displays with Montebello-based California Display. The rectangular department store model is contemporary and sleek. An earlier ornate oval sits next to this newer incarnation at the Anastasia salon.

The debut Fall Colors 2000 collection celebrates Hollywood style with two palettes — one that is "glamorous" and warm and one that is "chic and downtown."

Soare started the cosmetics line with Arnold Simion, chairman and chief executive officer of Aris Industries, and Deborah Simion, Aris board member and, at the time, head of overseas sales for Anastasia. That relationship ended in April when Soare decided to finance the line herself.

Nonetheless, plans are still underway to make Anastasia a global name. "I especially want to take it to Europe, Japan and Saudi Arabia," said Soare, who is relying on word of mouth and editorial exposure to spread brand awareness.

Of the overall goals for the line, she admitted, "step two," a full skin care collection, is underway, as is step three, a fragrance. She already has begun the painstaking process of identifying scents, but she's in no rush to bring out either category.

As for spreading her salon concept outside of 90210 borders, Soare said she is seriously considering the possibility. "Everyone keeps asking me, but right now I'm managing everything. I am such a control freak that I want to run everything. But definitely, that is my goal."

— Rose Apodaca Jones

Unrestricted

105/10

THE WALL STREET JOURNAL.

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VOL. CXXXVI NO. 79 WED. *** MONDAY, OCTOBER 23, 2000

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Business and Finance

What's News

GENERAL ELECTRIC Chairman and CEO Jack Welch launched an eight-hour bid of \$45 billion for Honeywell and told Honeywell's CEO he could stay on as GE's chairman through the end of 2001 to see the merger through. The move broke up Honeywell's planned \$40 billion merger with United Technologies. Honeywell's board accepted the GE offer.

AIET has created a plan to break the company free from separate businesses, with its biggest and most profitable unit, the Business Services division, becoming the new AIET.

Two Boeing customers, Singapore Air and Lufthansa, warned the jet maker that its push into aircraft maintenance services is not such a threat.

Eaton decided to put its defense electronics businesses on the auction block, reflecting growing investor pressure for a divestiture and new board members more open to such a step.

World-Wide

ISRAEL AND ARAB STATES cast more doubt on the Mideast peace process's future. An Arab summit in Egypt ended with a declaration that member states may consider breaking ties with Israel, though it didn't order such steps. That followed Barak's announcement that Israel was taking a "time-out" from the Oslo process, a move seen as a bid for a national unity government with Likud. After a weekend in which Likud's Netanyahu threatened, even a peace pact may be out of reach. (Article on Page A20)

France said it killed a nuclear test. **Proctor of the border with Lebanon** says **Lebanon** has a plan to send a company of supplies to Palestinian.

Core blasted Bush's plans to pull U.S. peacekeeping troops from the Balkans, saying it would damage NATO. Clinton pressed attacks on congressional Republicans, a role that has been played even as Bush blamed him for Washington's inaction. Withholds room for his very Bush is working to expand the electoral battlefield. (Articles on Page A10)

Bush released his 1999 tax returns, showing he paid \$1.22 in taxes on income exceeding \$1.6 million. His salary as governor was a small part of the total, with most coming from capital gains interest and dividends.

Inside Today's Journal

A REPORT ON



THE LESSONS WE'VE LEARNED
What works—and what doesn't when selling on the Web

- Auto dealers defy downsizers
- Shopping bots' new course
- E-commerce's many faces
- Selling toys isn't fun

See Section R

In an Arch Rivalry, Dueling Salons Vie For High-Brow Clientele

Anastasia and Valerie Twice
Wax and Sculpt Their Way To the Top in Beverly Hills

By Lisa Bannon
Staff Reporter of The Wall Street Journal
BEVERLY HILLS, Calif.—Two world-class artists of the wax and sculpture arts are more

The Outlook

Too Much Steel, Too Few Remedies

MELODYRABE suggests that steelmakers' loss of a break recently from battling each other to confront an old problem that's plaguing them all: The world is producing too much steel.

Steelmakers have the capacity to produce 500 million metric tons, or 750 million short tons, of steel annually—15% more than can be consumed. And companies continue to expand production about 2% each year in a losing attempt to shore up profits.

But at a conference here recently, the mood among steelmakers was surprisingly upbeat. It seems that the industry players in the industry acknowledge that at least stop falling if they begin to rise.

We first start focusing on building value and profitability capacity," said R. R. Shuler, president of Melroe Corp., a St. Paul, Minn., firm that manufactures construction equipment.

There's little doubt that consolidation would solve many problems for the steel industry. What fewer and bigger companies, the industry could maintain more control over prices. There are hundreds of steelmakers all over the globe, and the top five companies accounted for just 15% of world production in 1999, (USX Steel Corp., the biggest steelmaker in America, is only the 11th largest in the world in terms of capacity.)

Extended Tour

On Eve of Retirement, Jack Welch Decides To Stick Around a Bit

Blockbuster Move to Acquire Honeywell Puts Wrench In GE Succession Race

A Deal He Couldn't Pass Up

Jack Welch saved his biggest surprise for last. Late Friday morning, the chairman and chief executive of General Electric Co. pulled in an 11th-hour bid for Honeywell Inc., breaking a record for the company's largest acquisition.

Mr. Welch said that he could stay on as chairman through the end of 2001 to see the merger through. After Honeywell's board agreed to the deal, Mr. Welch said that he would remain chairman through the end of 2001 to see the merger through. After Honeywell's board agreed to the deal, Mr. Welch said that he would remain chairman through the end of 2001 to see the merger through.

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Unrestricted ABH1010131-11/10/2009

News—

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Israel said it killed a guerrilla infiltrator at its border with Lebanon Friday. Saddam Hussein said he was sending a convoy of supplies to Palestinians.

Gore blasted Bush plans to pull U.S. peacekeeping troops from the Balkans, saying it would damage NATO. Clinton pressed attacks on congressional Republicans, a role Gore hasn't played even as Bush blamed him for Washington inaction. With polls moving his way, Bush is working to expand the electoral battlefield. (Articles on Page A30)

Bush released his 1999 tax returns, showing he paid \$449,827 in taxes on income exceeding \$1.6 million. His salary as governor was a small part of the total, with most coming from capital gains, interest and dividends.

Kostunica visited Bosnia's Serb enclave and stopped in Sarajevo, the first Yugoslav leader to do so since the federation broke up in 1991. Milosevic's party appears in turmoil after the statement addressed it Saturday, and a vote on a Serbia power-sharing accord has been delayed. (Related article on Page A25)

The Navy revised its description of events leading to the attack on the USS Cole. It now says a bomb involved in the suspected suicide bombing drew alongside well after the ship had docked. Yemeni authorities have identified one suspect. (Article on Page A30)

An Osama bin Laden associate pleaded guilty Friday in a federal court in New York to helping plan the Africa embassy bombings. Al Muhamed, a former Army sergeant, made the plea in a deal for a lighter sentence.

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North Korea welcomed Secretary of State Albright as she arrived on a trip to ease Cold War tensions and explore the possibility of a Clinton visit. A Chinese military delegation had arrived before her. (Article on Page A26)

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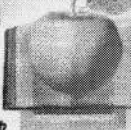
Inside Today's Journal

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- Selling toys isn't fun

See Section R

In an Arch Rivalry, Dueling Salons Vie For High-Brow Clientele

Anastasia and Valerie Tweeze Wax and Sculpt Their Way To the Top in Beverly Hills

By LISA BANNON

Small Reporter of THE WALL STREET JOURNAL
BEVERLY HILLS, Calif.—To connoisseurs of the eyebrow, and there are more than one might expect, Anastasia Soare is the leading architect of the arch. From a tiny pink storefront here, the 42-year-old Romanian emigre has reinvented herself as the brow queen of Beverly Hills.

"It's like when you're a kid and you hear about sex," whispers Sandra Ferguson, a gym owner who's been waiting for 45 minutes for Anastasia to wax, tweeze, brush and gel her brows into perfectly sculpted arcs. "You can't imagine how great it will be until you've tried it."

There are 34,000 pairs of eyebrows in this town, of which Anastasia has seen her fair share. She plucks up to 70 pairs a day, at an eye-popping \$40 a session, for customers willing to endure what is sometimes a two-hour wait and a three-month waiting list. With Anastasia's recently launched eponymous makeup and brow line, she has a new goal: to build an international eyebrow empire.

And that's the root of the problem for Valerie Sarnelle. If Anastasia is the Mozart of eyebrows, then Valerie is the Salieri. Valerie, who owns a competing salon a few blocks away, was plucking prominent brows long before Anastasia came along. She launched her own makeup line in 1984, and celebrities such as Heather Locklear and Cher flocked to her shop. "I have the most amazing cult following," says Valerie, a 45-year-old cosmetologist from Akron, Ohio. "I could put dog do in a cage and people would buy it."

But ever since Anastasia opened up in 1997, things haven't been the same. Last year, Anastasia ad-



Anastasia Soare

The Outlook

Too Much Steel, Too Few Remedies

MELBOURNE, Australia

Executives from the world's largest steelmakers took a break recently from battling each other to confront an old problem that's plaguing them all: The world is producing too much steel.

Steelmakers have the capacity to produce 868 million metric tons, or 956 million short tons, of steel annually—15% more than can be consumed. And companies continue to expand production about 2% each year in a losing attempt to shore up profits.

But at a conference here recently, the mood among steelmakers was surprisingly upbeat. It seems that the biggest players in the industry acknowledged that the value of their companies would rise, or at least stop falling, if they begin to close inefficient plants, scale back production and consolidate.

"We must start focusing on building value and not building capacity," said Kirby Adams, president of Melbourne-based BHP Steel, a unit of Broken Hill Proprietary Co.

There's little doubt that consolidation would solve many problems for the fractured industry. With fewer and bigger companies, the industry could maintain more control over prices. There are hundreds of steelmakers all over the globe, and the top five companies accounted for just 15% of world production in 1999. (USX-U.S. Steel Corp., the biggest steelmaker in America, is only the 11th largest in the world in terms of capacity.)

By comparison, the top five auto makers controlled 57% of world production last year, and the top five appliance firms controlled 55% of production. Alcoa Inc., the world's biggest aluminum maker, which just gobbled the third-largest aluminum maker this summer, accounts for about 20% of the market.

It's also clear that companies can't continue to rely on antidumping trade laws to limit capacity. In recent years, just about every steelmaker has successfully sued its foreign competition for dumping steel in its home market. It's not just the big industrial nations leveraging trade laws and protecting home turf. Developing and smaller nations, such as Peru and Ukraine, are becoming more nationalistic and sophisticated in the use of antidumping laws that generally favor their home market. And with fewer and fewer jobs tied to the steel industry, steelmakers probably will see their political influence subside and antidumping laws eased in the years ahead.

The problem is that there are so many small players because of the nationalistic approach," said Sir Brian Moffet, chairman of London-based Corus Group PLC, at the Melbourne meeting. "How can we as an industry limit capacity?"

The only way, most executives here agreed, is consolidation. But in the hyper-competitive world of steelmaking, the idea of simply shutting down steel mills or arranging mergers in an effort to stem the supply flood isn't likely to take hold soon.

That's because steelmaking is still an essential part of many nations' economies. Buildings, farm equipment, ships and just about everything that makes up the physical infrastructure of a community and nation depend on steel. Many

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identified one suspect. (Article on Page A30)

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Russian and Norwegian divers pierced the outer hull of the sunken nuclear submarine Kursk, but deteriorating Barents Sea weather may curtail the operation. They are trying to recover bodies of 115 crewmen.

Suspected Basque rebels killed a prison officer who worked at a jail in Nariñe, Spain. The car bombing in Victoria came a day after a rally in Bilbao drew 100,000 people demanding an end to separatist violence.

Ivory Coast voted in presidential elections in which Gen. Robert Guie, who seized power in a coup last year, is seeking to legitimize his rule. A boycott by opposition parties has left him with a single serious rival.

A Mexico City disco fire killed 19 Friday, and survivors said two of three exits were blocked by bouncers who demanded that patrons pay before leaving the burning building. The owners of the club are being sought.

Alleged auto-loan bias came under scrutiny as the Justice Department joined a suit linking Nissan's credit arm to a dealer's alleged gouging of blacks. A similar case is pending against GMAC. (Article on Page A17)

Former President Carter has cut life-long ties to the Southern Baptist Convention over what he called its "increasingly rigid" creed, including its recent barring of female pastors. Carter announced the split Friday.

Died: Robert Ray, 22, whose family home was burned after he and two AIDS-exposed hemophiliac brothers won a 1987 court battle to attend school, Friday, in St. Petersburg, Fla., of AIDS and hemophilia complications.

for 45 minutes for Anastasia to wax, tweeze, brush and gel her brows into perfectly sculpted arches. "You can't imagine how great it will be until you've tried it."

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But ever since Anastasia opened up in 1997, things haven't been the same. Last year, Anastasia appeared on "Oprah," making her an overnight sensation. Movie stars like Helen Hunt and Jennifer Lopez began dropping by. Women's Wear Daily dubbed her America's "celebrity eyebrow queen." "I actually panic when I go away because I don't trust anybody else," says former "E.R." regular Julianna Margulies.

Now, Nordstrom Inc. is opening Anastasia eyebrow and makeup counters in 10 stores across the country. "I have created an industry!" Anastasia says.

Determined to shift the spotlight, Valerie is launching an all-out offensive against her rival. "Valerie is the official brow queen of Beverly Hills. It even says so on her pencil," Charlie Trainer, Valerie's shop manager, reminds clients. Indeed, "Brow Queen Pencil" is written squarely across every Valerie Beverly Hills marker.

Valerie has begun telling clients that Anastasia has stolen employees and copied her makeup packaging. In an overt declaration of war, she accuses Anastasia of running an assembly-line operation, turning out "cookie cutter" arches.

"She does 'Bocmerang' eyebrows," charges Valerie, illustrating her point with



Anastasia Soare



Valerie Sarnelle

time to rely on antidumping trade laws to limit capacity. In recent years, just about every steelmaker has successfully sued its foreign competition for dumping steel in its home market. It's not just the big industrial nations leveraging trade laws and protecting home turf. Developing and smaller nations, such as Peru and Ukraine, are becoming more nationalistic and sophisticated in the use of antidumping laws that generally favor their home market. And with fewer and fewer jobs tied to the steel industry, steelmakers probably will see their political influence subside and antidumping laws eased in the years ahead.

"The problem is that there are so many small players because of the nationalistic approach," said Sir Brian Maffet, chairman of London-based Corus Group PLC, at the Melbourne meeting. "How can we as an industry limit capacity?"

The only way, most executives here agreed, is consolidation. But in the hyper-competitive world of steelmaking, the idea of simply shutting down steel mills or arranging mergers in an effort to stem the supply flood isn't likely to take hold soon.

That's because steelmaking is still an essential part of many nations' economies. Buildings, farm equipment, ships and just about everything that makes up the physical infrastructure of a community and nation depend on steel. Many

countries have invested millions of tax dollars in steel factories and are reluctant to shutter their operations, lay off workers and depend solely on imports. If anything, it's likely that governments in many countries will help struggling steel mills stay in operation with loans and grants.

So even though companies are ready to embrace consolidation, convincing governments to do so will be more difficult.

"We have been very bad at getting rid of steel plants," said Ian Christmas, secretary general of the International Iron and Steel Institute, a group that represents the world's top steelmakers. "Steel companies don't just die. They are reborn, and they struggle until they die a new death."

In the U.S., it isn't easy to trim capacity, partly because of things such as the U.S. Emergency Steel Loan Program, which helps bail out distressed companies. Steel industry executives now admit that the program may be doing more harm than good.

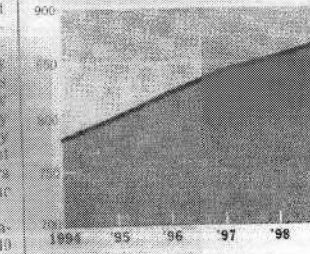
Meanwhile, American steelmakers are building new capacity even as the U.S. industry is reeling from prices at decade lows. Bethlehem Steel Corp., mired in a string of negative quarterly earnings, has just invested \$350 million in a new cold-rolling mill in Maryland that will be able to produce 1.5 million tons a year. Nucor Corp., Steel Dynamics Inc., Stelco Inc. and National Steel Corp. all have plans to add capacity in the U.S.

Akira Chihaya, president of Japan's Nippon Steel Corp., predicted that there would be less political will to fight the closure of steel mills throughout the world. Steel mills are no longer huge job centers with thousands of employees wielding political clout, he said.

—ROBERT GUY MATTHEWS

Metal Fatigue

Global steel output, in millions of metric tons



Source: World Steel Dynamics

TODAY'S CONTENTS

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Eyebrow Experts Are Really Arch Rivals

Continued From Page A1

a feigned expression of shock. "They all look like they got electrocuted."

The hottest trend to hit the beauty industry since body glitter, brow shaping has become a big competitive business well beyond the confines of Beverly Hills. Department stores are installing brow counters manned by specially trained "aestheticians." HarperCollins just published a new coffee-table book, "The Eyebrow," chronicling noteworthy brows through the ages, from those of Queen Elizabeth I to Jack Nicholson. Makeup companies are launching a cornucopia of brow products ranging from \$25 Pre-Tweeze Gel to \$35 After-Tweeze Cream to brow pomade and stick-on stencils called "The Brooke," "The Marilyn" and "The Pamela."

Mac Cosmetics has seen a 30% to 40% increase in eye-related makeup over the past 18 months, a large part of which is eyebrow products, says its president, John Demsey. Even men are getting in on the act. Beverly Hills' leading salons estimate that 20% of their clients are men looking to tame unruly eyebrow hairs.

Debates rage over plucking techniques. There are those who swear by tweezers. Others favor wax. This may be the one point Anastasia and Valerie agree on: Both are agnostic.

'It's So Easy for Me'

A confessed workaholic who fled Romania in 1989, Anastasia can be found five days a week behind a lavender organza curtain, waxing and tweezing, up and down, her hands bobbing as fast as a sewing machine. "To me it's a form of hypnosis," says the elegant brunette, who barely speaks to clients during the seven-minute procedure. "It's so easy for me. I don't even think about it."

Valerie, a blonde who resembles Suzanne Somers, has a completely different approach. She spends a full half-hour on her clients, chatting exuberantly about life, love and the pursuit of plastic surgery. Far from "boomerangs," Valerie shapes what she calls a gentler, more natural arch, for a more modest \$35.

At first there seemed to be plenty of clients for both star pluckers. The first sign of trouble came more than a year ago when two of Valerie's best employees de-

fected to Anastasia, taking customers with them. When Anastasia launched her makeup line last March, Valerie quickly accused her of "proceeding to copy all of my packaging."

Things escalated quickly. One day Valerie found Anastasia's business card shoved under her salon door. On the back was scribbled "Saw the books. Not so busy. Oh well, better luck next time." It was signed Damone Roberts, Valerie's former assistant who then worked for Anastasia.

"I called her up," says Valerie, tweezers poised midpluck. "And I said, 'This is Valerie' and she said, 'Valerie who?' like she didn't know me. And I said, 'You know, the other brow queen around the corner.'"

Valerie threatened to sue her nemesis for taking her employees, but she hasn't done anything so far. For now, she's keeping a close eye on her clients. "The minute they walk through that door," Valerie says, finishing up the brows with a flourish of pink highlighter, "I can tell if they've been to see her."

Yet even in the thick of battle, Valerie denies any knowledge of the stink bomb.

Battle Cry

One day earlier this year, clients at Anastasia sniffed the foul smell of sulphur wafting through the salon. They eventually found an ignited smoke bomb outside the door.

"The stink bomb showed up a day or two after Anastasia got a big article" in a fashion magazine, recalls Mr. Roberts, author of the provocative note to Valerie, who was working inside Anastasia's shop at the time. "Only one person could have done that," he says.

Valerie denies even hearing about the stink bomb. "Who would do such a thing?" she responds. Anastasia confirms the incident, but declines to point fingers.

In fact, Anastasia says she doesn't want to dignify any of Valerie's complaints with a response. "That takes a lot of energy," she says. "You could use that to improve your business or be nice to your customers."

Anastasia will say that Valerie's employees who defected did so voluntarily, and she never encouraged them to bring any clients. "I don't want Valerie's clients. I think there are enough customers for

everybody." And she claims the packaging for her makeup line is completely original and not a copy of Valerie's wares.

In any case, Anastasia says she doesn't have time to dwell on Valerie. This fall she launches the Nordstrom counters. Next, she would like to launch a skin-care line, followed by a fragrance. Eventually she dreams of taking her company public. "If I want something, I will get it," she says. "I am the most ambitious person you have ever met."

'I Would Have Made Him a Star'

Meanwhile, a third front has quietly opened, threatening both brow mavens. Three months ago, Mr. Roberts left Anastasia to strike out on his own, moving to a nearby salon on Beverly Hills' Robertson Blvd. It was a decision his mentor didn't like one bit. "It's the biggest mistake of his life to leave me," Anastasia says. "I would have made him a star."

If customers inquired about Mr. Roberts' whereabouts at Anastasia's shop, they were told he had moved to Northern California to help his sickly mother. The subterfuge steamed Mr. Roberts, and some of his clients, but Anastasia defends the white lie. "Business is business," she says.

Even so, Damone, as he's known, had already cultivated a following for himself. A 27-year-old native of the San Francisco area, he had studied art at Rutgers University in New Jersey and did makeup for the television show "Beverly Hills 90210." When he left Anastasia, customers, including celebrities such as Madonna, Kirstie Alley and Patti LaBelle, sought him out. In addition to charging only \$30, he didn't have a long waiting list.

"Damone is really accommodating," says Ms. Hall, while she sits at Mr. Roberts' new salon, Sager French. "There's no attitude here."

Maryam Alizadeh, another former Anastasia client, says she's tried all the brow shapers in town but likes Damone best. "Valerie ruined my arch," she says. "And I felt like Anastasia got a little big for her britches."

Anastasia says she doesn't worry about losing clients, or losing her perch. "I'm not saying I'm the best," she says. "There are many painters in the world. But there is only one Picasso."



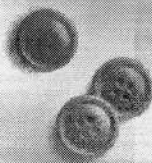
Two Mortgage Buyers Strike Deal to Permit Debt, Risk Reviews

Continued From Page A2

ratings on their stocks. But in 4 p.m. New York Stock Exchange composite trading Friday, Fannie Mae fell \$2.50 to \$75.96, and Freddie Mac slid \$1.06 to \$55.38.

Still, analysts concede that the nonbinding agreement came at little cost for the two companies, and some observers wondered whether the agreement would be enough to placate the companies' foes.

"The measures announced [on Thursday] ... by Fannie Mae and Freddie Mac, if fully implemented, are useful ones that have the potential to promote market discipline and increase transparency," said Assistant Treasury Secretary Michelle Smith. But "there remains a range of issues with respect to [government-sponsored enterprises] that warrant continuing attention from financial authorities, the Congress and their regulators," she added. Jonathan Gray, an analyst at Sanford C. Bernstein in New York, said he believed the agreement would help cool some of the political pressure, but he noted that many of the provisions, are



It was the kind of thing Nisar Chowdry had be-

Division to make something better. In this case ... buttons. Shirt buttons

cycle time cut by 35 to 40 percent, and "while you're at it" make

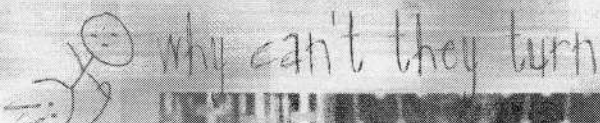


EXHIBIT E

**DECLARATION OF DAPHNE SHERIDAN BASS IN SUPPORT OF
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

I, Daphne Sheridan Bass, hereby declare under penalty of perjury as follows:

1. I am a member of the Bar of the State of California and attorney to Applicant.
2. On March 2 and 9, 2009, I conducted an online search on Google by typing "Anastasia Beverly Hills" in the search box. This search directed me to Opposers' site "www. anastasia.net" labeled "-Anastasia Soare - THE DEFINITIVE BROW EXPERT".
3. On Opposers' site in a box entitled "Search for Products & Keywords", I typed "moisturizing lotion". That search produced "0" results. I then typed "moisturizing cream". That search produced "0" results. My typed searches for "face lotion" and "face cream" also produced "0" results. True and correct copies of these search results are attached hereto as **Exhibits E-1, E-2, E-3 and E-4**.
4. I also searched Opposers' site for any skincare products under "Product Categories" links entitled "Brows", "Eyes", "Brushes", "Tools", "Kits" and "Giveaways". Under the "Face" Link, a "Baked Highlighting Brow Kit", makeup concealer but no skincare products appeared; a true and correct copy of this search page being attached hereto as Exhibit **E-5**. Under the "Eyes" Link, 3 cosmetic pencils and the foregoing 2 products listed under "Face" appeared and no skincare products; a true and correct copy of this search page being attached hereto as Exhibit **E-6**.
5. Opposers' "Brushes" Link showed 3 brushes, its "Tools" Link showed 6 tools; its "Kits" Link showed 9 Brow Kits; its "Giveaways" Link showed a "Brow Kit" and its "Brows" Link showed 29 eyebrow products; true and correct copies of all such search pages attached hereto as **Exhibits E-7, E-8, E-9, E-10 and E-11A through E-11D**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 11th day of February, 2010 in Santa Monica, California.

DATED: February 11, 2010



DAPHNE SHERIDAN BASS

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- Brows
- Eyes
- Face
- Brushes
- Tools
- Kits
- Giveaways

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Search for Products & Keywords

moisturizing lotion

Search

FAQ's | Beauty Tips | Golden Ratio

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Home :: Search Results

Product Search

Search For:

moisturizing lotion

Search

☒ All Words ☐ Any Word ☐ Exact Phrase

Search In:

☒ Product Title ☒ Short Description ☒ Detailed Description ☒ Style (SKU)

Advanced Search Options

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- Kits
- Giveaways

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Search for Products & Keywords

moisturizing cream

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Product Search

Search For:

moisturizing cream

Search

☒ All Words ☐ Any Word ☐ Exact Phrase

Search In:

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Search In:

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face cream

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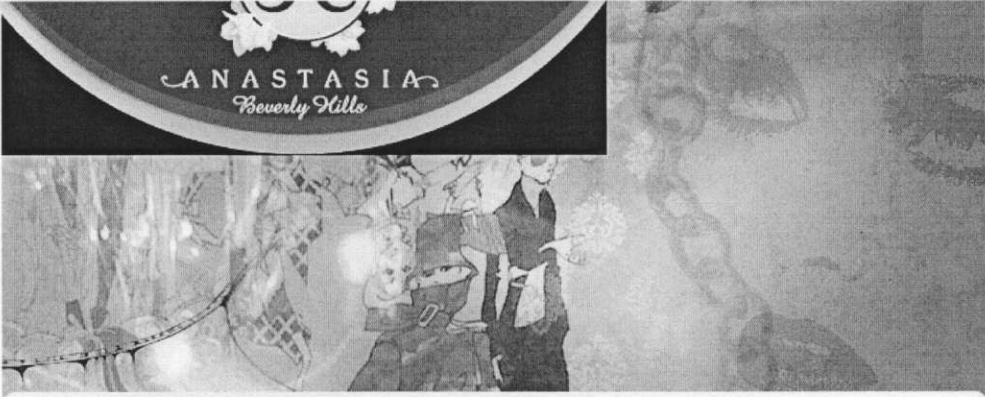
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face cream

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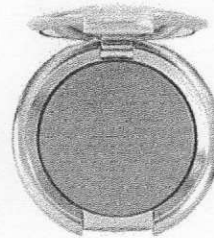
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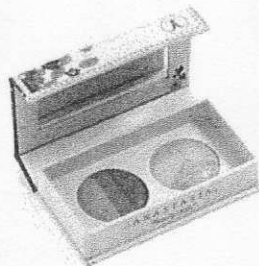
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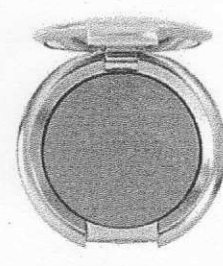
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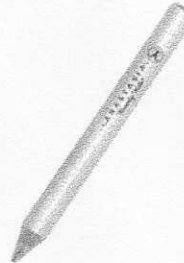
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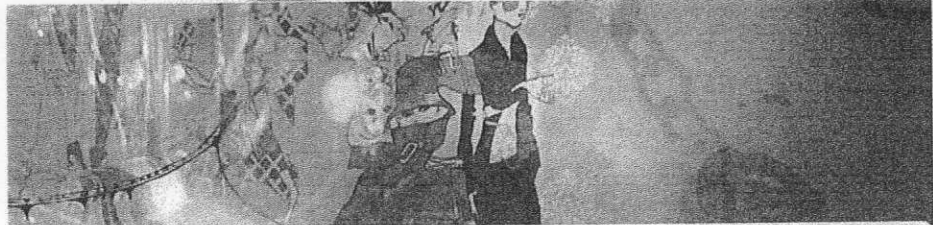
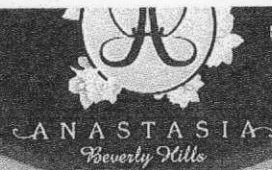
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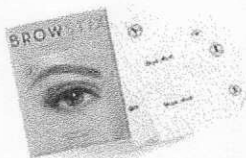
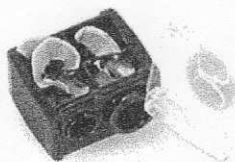
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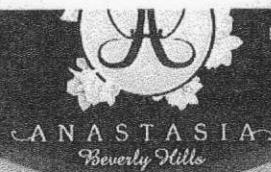
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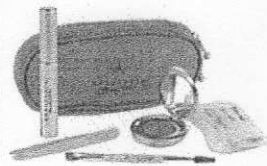
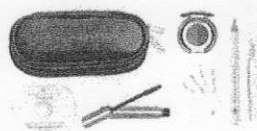
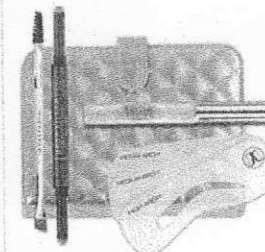
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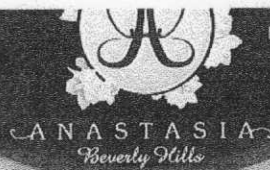
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All in One 7-Element Brow Kit Giveaway
\$85.00

SALON APPOINTMENTS

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All in One 7-Element Brow Kit Giveaway
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BEST SELLERS

[Brow Pen](#)
\$21.00

[Brow Powder Duo](#)
\$22.00

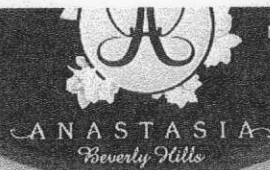
[Brow Wiz](#)
\$20.00

[Brow Enhancing Serum](#)
\$36.00

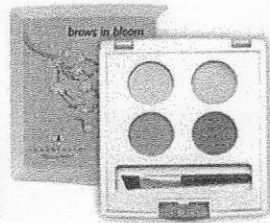
[Perfect Brow Pencil](#)
\$22.00

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Products :: Brows

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[Brows in Bloom](#)
\$28.00



[Clear Brow Gel](#)
\$21.00



[Go Brow](#)
\$21.00



[Matte Highlighter](#)
\$21.00



[Mini Brow Kit](#)
\$25.00



[Perfect Brow Pencil](#)
\$22.00



[Precision Tweezers](#)
\$28.00



[Scissors](#)
\$22.50

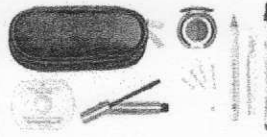


[Shimmer Highlighter](#)
\$21.00

EXHIBIT E-11B



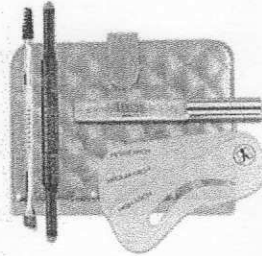
Stencils
\$20.00



The Essential 6 Piece Brow Kit
\$75.00



Tinted Brow Gel
\$21.00



Tweezers Anonymous
\$55.00



**Women's Cancer Research Fund
Tweezers**
\$35.00

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BEST SELLERS

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\$21.00[Brow Powder Duo](#)
\$22.00[Brow Wiz](#)
\$20.00[Brow Enhancing Serum](#)
\$36.00[Perfect Brow Pencil](#)
\$22.00

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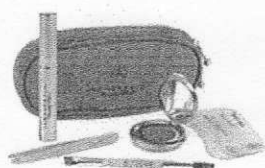
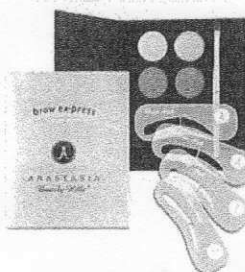
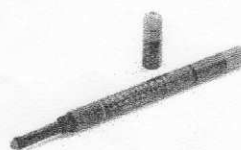
[5-Element Brow Kit](#)
\$65.00[After Tweeze Cream](#)
\$20.00[All In One 7-Element Brow Kit](#)
\$85.00[Baked Highlighting Brow Kit](#)
\$32.00[Brow Duality](#)
\$23.00[Brow Enhancing Serum](#)
\$36.00[Brow Express](#)
\$38.00[Brow Filler](#)
\$20.00[Brow Fix](#)
\$21.00

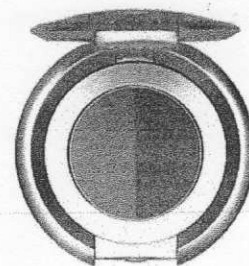
EXHIBIT E-11D



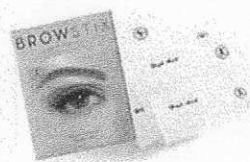
Brow Lights Kit
\$19.50



Brow Pen
\$21.00



Brow Powder Duo
\$22.00



Brow Stix
\$14.00



Brow Tool Kit
\$45.00



Brow Wiz
\$20.00

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **APPLICANT'S OPPOSITION TO MOTION TO DISMISS AND APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND ACCOMPANYING EXHIBITS and DECLARATION OF DAPHNE SHERIDAN BASS** was served by email, by agreement, on John M. May, Esq., attorney for Opposers, at John@May.us this 12th day of February, 2010.

Date February 12, 2010 
Daphne Sheridan Bass

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<hr/>)	
ANASTASIA BEVERLY HILLS, INC.)	
ANASTASIA SOARE)	
ANASTASIA SKIN CARE, INC.)	
)	
Opposers)	
)	
v.)	Opposition No.
)	91188736
)	
)	
ANASTASIA MARIE LABORATORIES, INC.)	
)	
Applicant.)	
<hr/>)	

APPLICANT'S OPPOSITION TO OPPOSERS' MOTION TO AMEND

Applicant, by its attorney, opposes Opposers' Motion to Amend their Registrations 2,798,069 and 2,821,892 in Class 3 which are the subject of Applicant's Cancellation Counterclaims on the ground of fraud in the instant matter. Applicant incorporates by reference as fully set forth herein its allegations of fraud set forth in its Motion for Summary Judgment and [Proposed] Amended Counterclaims for Cancellation filed concurrently herewith stating its position that, under *Tequila Cazadores, S.A. de C.V. and Bacardi Company, Limited v. Tequila Centinela, S.A. de C.V.* (Opp. No. 01125436, TTAB Feb. 24, 2004), Opposers' attempts to amend its registrations should be denied.

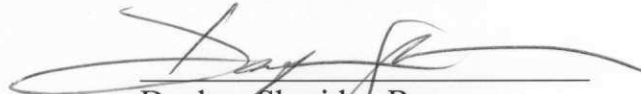
Anchored trademark doctrine is unequivocal that correction of a false statement regarding use if made before a registration has been challenged, may create a rebuttable presumption that [registrant] did not intend to commit fraud." *Zanella Ltd. v. Nordstrom, Inc.*, 90 USPQ2d 1758 (TTAB 2008). (Emphasis

added). In this case, Opposers seek to correct by amendment their false statements made nearly one year after the fraud claims were filed.

In view of the foregoing, it is respectfully requested that the Board deny Opposers' Motion to Amend Registrations 2,798,069 and 2,821,892 in Class 3.

Respectfully submitted,

DATED: February 11, 2010



Daphne Sheridan Bass
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Facsimile (310) 829-9018
daphneb@earthlink.net
Attorney for Applicant
Anastasia Marie Laboratories, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSERS' MOTION TO AMEND** was served by email, by agreement, on John M. May, Esq., attorney for Opposers, at John@May.us this 12th day of February, 2010.

Date

February 12, 2010

Daphne Sheridan Bass

Daphne Sheridan Bass